

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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TRUE RELIGION APPAREL, INC. and	)	
GURU DENIM, INC.,	)	
Plaintiffs,	)	Civil Action No. 07-12335
	)	
v.	)	PLAINTIFFS' MOTION FOR ORDER
	)	PRECLUDING EXPERT TESTIMONY
TRUE APPAREL COMPANY,	)	<u>BY AMY CUDDY</u>
Defendant.	)	
-----X		

REQUEST FOR EXPEDITED RULING  
AND THAT ANY HEARING  
OCCUR DURING THE HEARING CURRENTLY  
SCHEDULED ON DECEMBER 9, 2008

In view of the impending expert discovery deadline on December 17, 2008, the plaintiffs seek an expedited ruling on this motion in order for the plaintiffs to determine whether it is necessary to take the deposition of Professor Amy Cuddy. If the Court deems a Hearing to be necessary, the plaintiffs respectfully request that this matter be heard at the Hearing currently scheduled on December 9, 2008 at 11:00 a.m.

MOTION

The plaintiffs, True Religion Apparel, Inc. and Guru Denim, Inc. ("True Religion"), hereby move, pursuant to Rule 26 of the Federal Rules of Civil Procedure, for an Order to preclude Professor Amy Cuddy from presenting evidence under Federal Rule of Evidence 702, 703, or 705 on behalf of the defendant, True Apparel Company ("True Apparel").

MEMORANDUM OF REASONS

As grounds therefor, the plaintiffs, True Religion, state the following:

The deadline for expert witness reports and disclosures for the party without the burden of proof was November 26, 2008. Rule 26(a)(2) of the Federal Rules of Civil Procedure requires that a party disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705. Rule 26(a)(2)(A). The disclosure must be accompanied by a written report, “prepared and signed by the witness,” that contains information detailed in Rule 26(a)(2)(B).

On November 26, 2008, counsel for True Religion received from the defendant the “Expert Report by Aaron R. Brough” that was “Reviewed and Approved by Amy Cuddy” (“Expert Report”). Affidavit of Counsel Susan G. L. Glovsky, filed herewith (“Glovsky Afft.”) ¶3. There is no question that the Expert Report was prepared by Mr. Brough and not Professor Cuddy. For example, in the “Introduction and Scope of Work” the Expert Report states, “I am Aaron Brough, a Ph.D. candidate ... .” Glovsky Afft. ¶7. In addition, the Expert Report does not provide as to Professor Cuddy any of the information required by Rule 26(a)(2)(B). Glovsky Afft. ¶8. No expert report was received that was prepared by Professor Cuddy. Glovsky Afft. ¶9.

To be sure that the defendant did not, based on Mr. Brough’s Expert Report, intend (improperly) to have Professor Cuddy present evidence under Federal Rule of Evidence 702, 703, or 705 at trial, the plaintiffs sent a letter on December 2, 2008 to the defendant’s counsel seeking clarification. Glovsky Afft. ¶10, Exhibit D. Clarification was necessary to determine whether to bring this motion and whether to depose Professor Cuddy before the expert discovery deadline. No response to this letter was received by counsel. Glovsky Afft. ¶11.

In view of the lack of a written report from Professor Cuddy, as required by Rule 26(a)(2)(B), the plaintiffs respectfully seek an Order that Professor Cuddy may not present evidence under Federal Rule of Evidence 702, 703, or 705 at the trial of this action.

The plaintiffs file herewith an Affidavit of Counsel in support of this motion.

TRUE RELIGION APPAREL, INC. and  
GURU DENIM, INC.

By their attorneys,

/s/ Susan G. L. Glovsky

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Dated: December 4, 2008

LOCAL RULE 7.1(A)(2) CERTIFICATION

I, Susan G. L. Glovsky, hereby certify that on December 2, 2008, I contacted Mr. Wolfe by sending a letter by email in an in an effort in good faith to resolve or narrow the issues and did not receive a response. On December 4, 2008, I called Mr. Wolfe in a further effort to determine whether a motion was necessary and left a voicemail.

/s/ Susan G. L. Glovsky  
Susan G. L. Glovsky

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on December 4, 2008.

/s/ Susan G. L. Glovsky  
Susan G. L. Glovsky

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